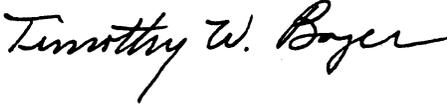


Memorandum

To : Mr. Steve Kamp, Chief of Staff
Fourth District

Date: August 22, 2000

From : Timothy W. Boyer 
Chief Counsel

Subject : **Contribution Disclosure Opinion 2000-03**

A discussion with a person who cannot impact the outcome of a decision does not constitute participation. A Board Member may participate in a decision after the aggregate amount of two contributions falls below \$250 due to the end of the twelve-month period for one of the contributions. The period ends 12 months after the contribution is received rather than 12 months after the contribution is made.

You have asked for responses to the following two questions:

Question 1

A Board Member is disqualified from participating in a property tax valuation appeal because of disqualifying contributions from PG&E and its representative. Can the disqualified Member discuss the issue of deferred income tax treatment for property tax valuation purposes with a representative of a county? The discussion would center on the refunds that the county would have to make as a result of Board action. Would such a discussion constitute "participation" for purposes of the Kopp Act (Government Code section 15626)?

§ 8 California Code of Regulations (CCR), section 7008(b) provides that:

A board member will be considered to have participated under Government Code Section 15626 in a matter if he or she, acting with the authority of his or her office:

- (1) Votes on a matter.
- (2) Takes part in the discussion regarding the matter.
- (3) Urges other board members to reach a particular result in the matter.
- (4) Is present and determines not to act when a vote is called without disclosure of the reasons for disqualification.

Of the actions that constitute "participation" listed above, only number 2 warrants discussion here. We are of the opinion that "[t]akes part in the discussion regarding the matter" means that the member discusses the matter with those who are part of the deliberative or decision making process. Conversely, the member is not taking part in the discussion if he only discusses the matter with persons who are not part of the deliberative or decision making process.

In the Hunter Advice Letter, A-96-161, the Fair Political Practices Commission (FPPC) discussed the scope of disqualification as applied to a Government Code section 87100 conflict of interest. The FPPC said:

Please note that where a conflict of interest does exist with respect to the decision in question, the prohibition on the official's involvement has been broadly construed in furtherance of the purposes of the Act. In the Feinstein Advice Letter, No. A-84-057, we stated:

The Commission has consistently advised that the Act's prohibition precludes participation in even the formative stages and precludes debating or discussing the issue and even chairing a meeting when the issue is being discussed. Consequently, on those issues for which it is reasonably foreseeable that the ultimate decisions will have a material financial effect upon the ... [source of gifts], you may not participate in any preliminary activities which involve your exercise of judgment.... At the minimum, these activities include: preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, solicitation of bids and the give and take which goes beforehand in the making of the decision to commit.

Thus, if a conflict of interest exists, the official would also be prohibited from participating in preliminary decisions that could affect the ultimate outcome of the study. (Emphasis added.)

Even under this broad definition of participation, discussions that cannot impact the outcome of the decision would not be prohibited. Since a discussion with a county representative cannot impact the decision, we are of the opinion that such a decision would not constitute participation in the decision.

Question 2

The Board Member received a \$225 contribution from PG&E. He also received a \$249 contribution from the taxpayer's representative. When these contributions are aggregated, the Board Member is disqualified. The second part of the PG&E appeal on an intangible valuation issue is scheduled for September. The \$225 contribution was made by check dated September 9, 1999, and was received by the Member on September 14, 1999. If the contribution expires before the hearing, can the member participate?

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The Kopp Act provides that a member is disqualified from participating in a decision "if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months." (Emphasis added.) For purposes of the Kopp Act, the term contribution has the same meaning prescribed in Government Code section 82015 and the regulations adopted thereto. FPPC regulation, 2 CCR 18421.1(c), provides that "[a] monetary contribution is 'received' on the date that the candidate or committee, or the agency of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made."

We have opined that a disqualified Board Member may vote on a matter 12 months after the last disqualifying contribution was received. If a proceeding is continued beyond the twelve-month period, the Board Member may participate in the decision. (CDO 93-5.) In the case of contributions that have been aggregated, the disqualification ends once the total aggregated contribution drops below \$250 for the preceding 12 months.

Since contribution disclosure forms are completed by donors, the "contribution date" listed on the forms is normally the date a contribution was made rather than the date it was received. In most instances the difference is not significant, but in this matter it is critical. Although the contribution was made on September 9, 1999, it was not received until September 14, 1999. The first day of non-disqualification is September 15, 2000, the day after the September Board meeting. (For a discussion of "preceding 12 months," see CDO 91-20.)

If you have any further questions regarding this matter, please call me at 445-4380.

cc: Contribution Disclosure Binder Distribution List